

Message Text

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ACTION IO-14

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C O N F I D E N T I A L SECTION 01 OF 02 USUN NEW YORK 00866

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E.O. 11652: GDS
TAGS: EGEN, UN, ECOSOC, EINV
SUBJECT: ECOSOC WORKING GROUP ON CORRUPT PRACTICES

1. SUMMARY: THE FIRST SESSION OF THE RESUMED ECOSOC WORKING GROUP ON CORRUPT PRACTICES CONCENTRATED PRIMARILY ON A FRENCH PROPOSAL FOR A TREATY ON BRIBERY ANALOGOUS TO THE HAGUE CONVENTION ON HIJACKING, WHICH WOULD INCLUDE PROVISIONS FOR CRIMINALIZATION OF THE OFFENSE, EXTRADITION, AND JUDICIAL ASSISTANCE. WORK WAS CONCENTRATED ON TECHNICAL LEGAL QUESTIONS AND DID NOT COVER MUCH GROUND. MOST OF THE DISCUSSION WAS CARRIED BY THE DEVELOPED COUNTRIES. THE LDC'S MAINTAINED A PASSIVE ATTITUDE, AND NO POLITICAL QUESTIONS WERE RAISED IN THE MEETINGS. END SUMMARY.

2. THE ECOSOC AD HOC INTERGOVERNMENTAL WORKING GROUP ON CORRUPT PRACTICES, EXTENDED AND EXPANDED TO INCLUDE ALL INTERESTED UN MEMBERS UNDER ECOSOC RESOLUTION 2122, HELD ITS FIRST SESSION IN NEW YORK MARCH 6-10. A SECOND SESSION IS SCHEDULED FOR NEW YORK APRIL 3-14. THE INTERGOVERNMENTAL WORKING GROUP (IGWG) ELECTED A BUREAU CONSISTING OF FARROKH PARSI (IRAN) AS CHAIRMAN, ACEMAH (UGANDA) AS RAPPORTEUR, AND MOK (NETHERLANDS) AND BOTERO (COLOM-
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BIA) AS VICE CHAIRMEN. THE SOCIALIST GROUP COUNTRIES ARE NOT PARTICIPATING, SO NO EE VICE CHAIRMAN WAS ELECTED. ALTHOUGH THE WORKING GROUP IS NOW OPEN TO ALL MEMBERS OF THE UN WITH MANY ADDITIONAL COUNTRIES INSCRIBED AS MEMBERS, THERE WAS VERY LITTLE PARTICIPATION BY DEVELOPING COUNTRIES WHO DID NOT PARTICIPATE IN LAST YEAR'S WORKING GROUP. DESPITE PRIOR INDICATIONS TO THE CONTRARY, THE PHILIPPINES AND

GHANA DID NOT ATTEND. THAILAND WAS REPRESENTED OCCASIONALLY BY A BUSINESSMAN FROM NEW YORK. MOST OF THE DELEGATIONS FROM THE INDUSTRIAL COUNTRIES INCLUDED EXPERTS FROM CAPITALS, BUT MOST LDC'S WERE REPRESENTED BY JUNIOR OFFICIALS FROM THEIR UN MISSIONS. WORK SESSIONS USUALLY STARTED VERY LATE BECAUSE OF THE DIFFICULTY OF OBTAINING THE NECESSARY QUORUM OF FOUR DELEGATIONS FROM EACH REGIONAL GROUP.

3. THE KEY DEVELOPMENT OF THE SESSION WAS THE INTRODUCTION BY FRANCE OF A COMPLETE TEXT OF A TREATY ON BRIBERY WHICH FRANCE PROPOSED AS AN ALTERNATIVE TO THE REPORT OF LAST YEAR'S WORKING GROUP. THE FRENCH TEXT CONSISTED OF SEVEN ARTICLES DEFINING THE OFFENSE AND REQUIRING CONTRACTING STATES TO MAKE THE OFFENSE PUNISHABLE BY SEVERE PENALTIES AND TO ESTABLISH THEIR JURISDICTION OVER THE OFFENSE WHEN COMMITTED IN ITS TERRITORY OR BY ONE OF ITS NATIONALS. THE TEXT ALSO INCLUDED PROVISIONS FOR JUDICIAL ASSISTANCE, EXTRADITION, AND AN OBLIGATION EITHER TO PROSECUTE OR EXTRADITE ON THE GENERAL LINES OF THE HAGUE CONVENTION ON HIRING. THIS FRENCH TACTIC, WHICH WAS NOT COORDINATED IN ADVANCE WITH OTHER MEMBERS OF THE EC, WAS AIMED AT REPLACING THE REPORT OF THE PRIOR WORKING GROUP WHICH ENCOMPASSED SEVERAL OTHER SUBJECTS INCLUDING THE REPORTING AND DISCLOSURE PROVISIONS PROPOSED BY THE U. S. AND PROVISIONS ON PAYMENTS OF TAXES AND ROYALTIES TO "ILLEGAL MINORITY RECONFIDENTIAL

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GAMES IN SOUTHERN AFRICA." FROM THE U. S. STANDPOINT, IT WAS A POSITIVE DEVELOPMENT IN THAT IT REPRESENTS THE FIRST FRENCH COMMITMENT TO AN INTERNATIONAL AGREEMENT ON ILLEGAL PAYMENTS AND INCLUDES CRIMINALIZATION, ONE OF THE MAJOR U. S. SUBSTANTIVE OBJECTIVES. HOWEVER, THE FRENCH MANEUVER PRESENTS THE U. S. WITH A NUMBER OF SUBSTANTIVE AND TACTICAL PROBLEMS. IF ADOPTED IN ITS ORIGINAL FORM, THE FRENCH PROPOSAL WOULD REQUIRE REVISION OF THE RECENTLY ADOPTED FOREIGN CORRUPT PRACTICES ACT TO INCLUDE ANY BRIBE OF A FOREIGN OFFICIAL BY ANY U. S. NATIONAL "IN CONNECTION WITH" ANY INTERNATIONAL COMMERCIAL TRANSACTION, NOT JUST FOR THE PURPOSE OF OBTAINING OR RETAINING BUSINESS, AND IRRESPECTIVE OF THE USE OF THE MAILS OR ANY OTHER LINK TO U. S. COMMERCE.

4. IN ORDER TO ENCOURAGE FRENCH PARTICIPATION AND TO HELP BRING ALONG THE UK AND THE FRG, WHO WERE PLAINLY DISCONCERTED BY THE FRENCH PROPOSAL, U. S. DEL AGREED TO TAKE THE FRENCH TEXT AS THE BASIS FOR DISCUSSION OF THE CHAPTER OF THE WORKING GROUP REPORT ON CRIMINALIZATION AND TRIED TO MODIFY THE TEXT TO TAKE ACCOUNT OF U. S. INTERESTS AND THE PREVIOUS WORK OF THE WORKING GROUP. IN VIEW OF THE DIFFER-

ENCES IN STRUCTURAL APPROACH, THIS BECAME AN EXTREMELY PAINFUL DRAFTING EXERCISE WHICH MADE ONLY MODEST PROGRESS. IT IS APPARENT THAT THE FRENCH WILL RESIST ANY SIGNIFICANT CHANGES IN THEIR TEXT AND ARE IN NO HURRY TO RESOLVE ANY ISSUES.

5. DURING THE FORMAL MEETINGS OF THE WORKING GROUP, THE U. S. DELEGATION EMPHASIZED ITS STRONG INTEREST IN INCLUDING PROVISIONS DEALING WITH REGULATION OF AGENTS IN THE AGREEMENT, AND WE CIRCULATED TO OECD DELEGATIONS AN IN-

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C O N F I D E N T I A L SECTION 02 OF 02 USUN NEW YORK 00866

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FORMAL PAPER, EMPHASIZING RECORD-KEEPING AND EXCHANGE OF INFORMATION ON AGENTS' FEES AS WELL AS CRIMINALIZATION.

6. DURING THE COURSE OF THE MEETING U. S. DEL ALSO HAD AN INFORMAL CONSULTATION WITH THE MEXICAN AMBASSADOR TO THE UN CUEVAS CANCINO AND SERGIO GONZALEZ-GALVES WITH A VIEW TO ENCOURAGING A DIALOGUE WITH MEXICO AND OTHER LDC'S ON THE SUBSTANCE OF THE AGREEMENT. GONZALEZ-GALVES EMPHASIZED THAT MEXICO REMAINS PREOCCUPIED WITH THE ULTIMATE LINK BETWEEN THE AGREEMENT ON ILLICIT PAYMENTS AND THE GENERAL CODE OF CONDUCT ON TNC'S. THE GOM APPEARED INDIFFERENT TO THE SUBSTANCE OF THE AGREEMENT. HOWEVER, GONZALEZ GALVES DID EXPRESS INTEREST IN BILATERAL CONSULTATIONS BETWEEN APPROPRIATE U. S. AND MEXICAN OFFICIALS ON THE BILATERAL IMPLICATIONS OF THE ADMINISTRATION OF U. S. AND MEXICAN LAWS ON BRIBERY. YOUNG

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